

## **REMARKS**

This is a full and timely response to the outstanding Advisory Action mailed August 19, 2005. Reconsideration and allowance of the application and pending claims are respectfully requested.

Applicant incorporates all comments and assertions made in the previous Response into the present document. In addition, Applicant provides explicit answers to the Examiner's arguments presented in the Advisory Action in the following.

### **A. "Querying the Local Network for Information" and "Checking for Services that are Available on the Local Network"**

In the Advisory, the Examiner first argues that Martin teaches "query the local network for information about a current environment" and cites column 3, lines 27-34 of the Martin reference. That portion of the reference provides as follows:

As a computer readable medium including computer program code for producing a navigation aid on a web page, another embodiment of the invention includes: computer program code for receiving a request for the web page from a requester; computer program code for determining identity of the requester; computer program code for determining device characteristics of a mobile device used by the requester; computer program code for retrieving menu information associated with the identity of the requester; computer program code for producing the navigation aid based on the menu information and the device characteristics, the navigation aid including a plurality of links to available services, and the navigation aid being in a format suitable for the mobile device; and computer program code for forwarding the web page including the navigation aid to the requestor.

[Martin, column 3, lines 22-36]

As can be appreciated from the above excerpt, Martin does *not* disclose “querying the local network” as is argued by the Examiner. Instead, Martin’s system in response to a request for a web page, determines various information about the requestor. *Nothing* in the above even comes close to suggesting “querying a local network.”

In addition, the Examiner argues that Rappaport teaches “checking for service that are available on network” and cites paragraph 23, lines 13-16. That portion of the Rappaport reference provides as follows:

In one embodiment, the database is structured to include a list of codes where each code is used to identify or indicate a particular medical procedure/test. For each code in the list, the database may also contain a list of one or more definitions of the respective code. In one embodiment, the database is used to store a list of data sources identified using the one or more definitions associated with each code. In one embodiment, the database is also configured to store a set of queries associated with each code. The set of queries associated with each code is constructed based upon the one or more definitions corresponding to the respective code. In one embodiment, the list of data sources associated with a particular code is obtained by running the corresponding set of queries against various databases available on the World Wide Web (WWW) to identify one or more documents or content links or services that match the query criteria specified in the corresponding queries. In one embodiment, a selection process is performed to select the list of data sources for the respective code from the documents or content links identified from the various web databases.

[Rappaport, paragraph 0023]

As can be appreciated from the above paragraph, Rappaport only teaches running queries against databases on the World Wide Web. *Nothing* in the excerpt says anything about querying a “local network”.

#### **B. Frigon’s “Computer”**

The Examiner has now clarified that the “computer” that the Examiner relies upon from Frigon’s disclosure is “computer 100” in Figure 1. Applicant thanks the Examiner for this clarification.

The Examiner argues in the Advisory Action that Frigon’s computer 100 includes a network browser *and* a personal image repository. This is untrue. As is clearly shown in Figure 1, “computer 100” is a client computer that includes a browser 105. All databases, however, are provided in server computer 200. Therefore, Frigon’s computer does *not* include a network browser and a personal imaging repository.

In the Advisory Action, the Examiner also states that the recitation of a “computer” has not been given patentable weight because it appears in the preamble of claim 41. Applicant asserts that such an action is clearly improper. The Manual of Patent Examining Procedure (MPEP) describes how claim preambles are to be treated in Chapter 2100. Specifically, MPEP § 2111.02 states that “If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the balance of the claim.” In addition, that section provides that “statements in the preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the recited purpose or intended use results in a structural difference (or, in the case of process

claims, manipulative difference) between the claimed invention and the prior art. If so, the recitation serves to limit the claim.”

In the present case, Applicant’s preamble does in fact “recite a limitation” in the sense of MPEP § 2111.02. Specifically, claim 41 an apparatus claim that is actually drawn to “a computer”. In other words, “a computer” is the invention that is at issue in claim 41. Accordingly, the preamble does not merely recite a “purpose or intended use.”

The Examiner’s disregard for the term “computer” in claim 41 appears to be motivated only by the inadequacy of the prior art coupled with a desire to reject the claim anyway. Applicant objects to this treatment of claim 41, and further objects to the fact that the Examiner is taking this position for the first time in the Advisory Action, thereby denying Applicant a full opportunity to respond.

**C. “Thin portal service . . . Configured to Query a Local Network” and to “Check for Imaging Services that are Available on the Local Network”**

The Examiner further argues that Smith teaches a “thin portal service that is configured to query a local network for information about a current environment, or check for imaging services that are available on a local network.” This is also untrue.

First, Smith never says anything about a “thin portal service”. This is also true of Figures 1 and 12A, which the Examiner identified for support in the Advisory Action.

Second, Smith does not state that any service is “configured to query a local network”. Paragraph 0094, which was cited by the Examiner, provides as follows:

FIG. 5B shows the general operating and communication steps that occur between advertising platform 12 and handheld device 16

through local communication and between advertising platform 12 and advertising server 22 over communications network 20 in the case where advertising platform 12 is stationary. Generally, each time client carrying a handheld device 16 comes into physical proximity of a stationary advertising platform 12, platform controller 24 receives information from client and provides appropriate advertising content to client as determined by the client's characteristics, (e.g. the client's demographic profile, as well as their coupon redeeming and purchase history), as will be further described.

[Smith, paragraph 0094]

As can be appreciated from this excerpt, Smith only teaches receiving information from a proximate handheld device, and providing advertising content in response. No local network is queried at all.

Third, Smith does not check for any services that are available on a local network. Paragraph 140, which was cited in the Advisory Action, provides as follows:

FIG. 12A illustrates the interaction of a client having handheld device 16 with advertising server 22 to facilitate the identification and provision of transit geographic and time of arrival information to the client. First, the client connects to advertising server 22 through a wireless network that includes a Wireless Application Protocol (WAP) portal 49. That is, the client uses WAP enabled handheld device 16 to connect to WAP portal 49 using Wireless Session Protocol (WSP) via the cellular communications tower 40. WAP portal 49 returns a "homepage" deck as determined by the network provider which lists the available services and links. The client is required to select the link to the WAP transportation unit location service. This link would specify the Uniform Resource Locator (URL) of advertising server 22.

[Smith, paragraph 140]

In this, Smith describes a handheld device that connects to an advertising server through a wireless network. In this process, the device connects with a portal, which returns a home page. *Nothing* in this description comprises checking for services that are available on a “local network”. Moreover, Applicant notes that claim 41 actually requires checking for “imaging services”. No such “imaging” services are identified by Smith.

#### **D. Provisional Application Support**

Applicant maintains that the provisional applications upon which the Frigon and Smith references rely do not provide the teachings or suggestions required to render Applicant’s claims obvious.

#### **E. Improper Treatment of Claim 29**

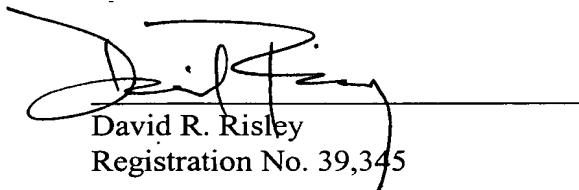
As was noted in the previous Response, claim 29 was presumably rejected under Martin and Rappaport, however, in describing the rejection, the Examiner described the limitations of claim 29 as being taught by “Frigon (US 2002/0103813A1).” Final Office Action, page 4. Given that the unexplained reference to Frigon rendered it impossible to ascertain the basis for the rejection of claim 29, Applicant asserted that the rejection of claim 29 was improper.

Applicant asserts that the Examiner’s correction of his error in the Advisory Action after prosecution on the merits is closed does not cure the error or the associated impropriety. In other words, Applicant has *still* been denied a full opportunity to respond to rejection of claim 29. It is Applicant’s position that the Examiner should have issued a further, non-final, Office Action, and not an Advisory Action.

## CONCLUSION

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Alexandria, Virginia 22313-1450, on

9-1-05

Mary Meegan  
Signature